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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Wild Goose Storage Inc., EnCana Corp., Carlyle/Riverstone Global Energy and Power Fund III, L.P., Carlyle/Riverstone Global Energy and Power Fund II, L.P. and Niska Gas Storage US, LLC for Review under Public Utilities Code Section 854 of the Transfer of Control of Wild Goose Storage Inc. from EnCana Corporation to Niska Gas Storage US, LLC and for Approval of Financing under Public Utilities Code Section 851.

Application 06-05-033  
(Filed May 26, 2006)

**ASSIGNED COMMISSIONER'S SCOPING MEMO  
AND JOINT RULING WITH ADMINISTRATIVE LAW JUDGE  
GRANTING MOTION TO INTERVENE, ADDRESSING  
PROTESTS, REQUIRING AMENDMENT TO MOTION FOR LEAVE TO  
FILE UNDER SEAL, AND ESTABLISHING INITIAL SERVICE LIST**

**1. Summary**

Joint Applicants have filed this Application for authority to transfer control of Wild Goose Storage Inc. (Wild Goose) from EnCana Corporation (EnCana) to the Carlyle/Riverstone Funds via the sale of all issued and outstanding shares of Wild Goose. Joint Applicants also ask the Commission to authorize the financing by which the Carlyle/Riverstone Funds propose to acquire Wild Goose. The Application states that the change in ownership will not result in the transfer of any certificates held by Wild Goose or the transfer of any of its gas plant or customers. Wild Goose will continue to operate as a natural gas storage provider in California, pursuant to Commission-ordered terms and conditions in Decision (D.) 97-06-091 and D.02-07-036.

Pursuant to Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this ruling addresses the scope and schedule for the proceeding, confirms the proceeding category, and designates the presiding officer; in addition, the ruling resolves outstanding procedural matters and establishes procedures for creating a new service list.

## **2. Motion to Intervene**

By motion filed June 27, 2006, W G Storage L.P. (W G Storage) seeks to intervene in this proceeding in order to protect its on-going financial interest in Wild Goose. The owners of W G Storage were the original developers of the Wild Goose natural gas storage project and sold their interests to the predecessor of the current owner in May 1996. W G Storage states that it does not oppose the application and that it does not seek hearing. No opposition to the motion has been filed. W G Storage has established a valid interest in this proceeding. The motion to intervene should be granted.

## **3. Protests**

Two protests have been filed, one on June 30, 2006 by Roseville Land Development Association (Roseville Land) and the other on July 6, 2006 by Lodi Gas Storage, L.L.C. (Lodi). On July 17, 2006, Joint Applicants filed a single reply to both.

### **3.1 Roseville Land**

Roseville Land, a California corporation, owns about 500 acres of farmland near the Wild Goose project, including one mile of right-of-way condemned in connection with the original construction. The expansion project, approved in July 2002 by D.02-07-036, includes an additional pipeline loop, yet to be built, across property owned by Roseville Land. In connection with the expansion, Wild Goose filed a condemnation action against Roseville Land in 2002 but the

proceeding apparently was abandoned before trial and this portion of the expansion has not been completed.

Roseville Land asserts a number of objections to the application and seeks hearings. The matter most closely linked to its own interests concerns the future completion of the expansion. Roseville Land posits the expansion will resume if a change of control occurs and will lead to another condemnation action, to the financial detriment of Roseville Land. The issues which arise from such a scenario fall outside this application, however, since they are not relevant to the merits of the proposed change of control or the requested financing authority.

The other asserted grounds for protest include the following: the change of control will increase Wild Goose's costs, leading to an increase in rates for its customers; the proceeds of the sale should be shared by Wild Goose's customers; the capital the purchasers have proposed to commit to the project is less than half of the current owner's retained earnings for 2005; and the application fails to show that the transfer will not further exacerbate price volatility in the California natural gas market.

Roseville Land is not a customer of Wild Goose or any other independent gas storage operator. Furthermore, Roseville Land has not shown that its stated concerns arise from disputed material facts which require resolution by hearing. Most of Roseville Land's concerns suggest a general misunderstanding of the regulatory regime in California governing independent gas storage facilities, which unlike incumbent public utilities, have no captive customers, offer market-based rates, and bear full risk for cost recovery of facility development, operation, and management.

To be sure, the financial status of the potential purchaser must be examined before the Commission can find that a transfer of control is in the

public interest, but Roseville Land's protest confuses things by focusing on measures (i.e., capital commitment of buyer vs. retained earnings of seller) that do not advance the necessary inquiry. Below, this ruling identifies relevant, material questions about the financial transaction proposed and requires Joint Applicants to provide additional information. Once that additional information has been filed, the need for hearing will be reassessed. Roseville Land, however, has not raised issues that require hearings.

### **3.2 Lodi**

Lodi's protest neither opposes the transfer of control nor seeks hearings. Lodi states that it has two objectives: (1) to clarify, lest the application create some misunderstanding on this point, that Wild Goose continues to be the largest independent gas storage owner/operator in the California market, and (2) to remove restrictions on storage or hub services transactions between independent gas storage providers and their affiliates. Lodi refers to conditions the Commission imposed on previous changes of control for Wild Goose (in D.02-07-036) and Lodi (D.03-02-071, D.05-12-007). Lodi also suggests that statements in the application raise the specter of ongoing affiliate transactions violations.

In its reply, Wild Goose states that nothing in its application is intended to suggest (1) that Wild Goose's position in the California market has diminished or (2) that Wild Goose seeks, by this application, to be relieved of the restrictions imposed by D.02-07-036. Wild Goose does not directly respond to Lodi's inference that Wild Goose has not complied with affiliate transactions restrictions. Wild Goose correctly points out, however, that if Lodi wishes the Commission to reexamine affiliate transaction restrictions on independent gas storage providers, other, more appropriate avenues are available (e.g., petition

for rulemaking).<sup>1</sup> We will not expand the scope of this proceeding to include such a reexamination.

#### **4. Scope**

This proceeding must determine the following ultimate issues:

- Is the proposed transfer of control of Wild Goose from EnCana to the Carlyle/Riverstone Funds in the public interest?
- Is it clear that the proposed transfer of Wild Goose from EnCana to the Carlyle/Riverstone Funds will have no significant effect upon the environment, so that the transaction should be exempted from further review under CEQA?
- Should the Commission approve the financing mechanism sought to structure the transfer of control?

The Application, as filed, makes several statements which require further clarification before the Commission can determine whether these ultimate issues may be resolved ex parte or whether hearings should be set. We direct Joint Applicants to provide additional information to more clearly explain statements in the public version of the application which raise questions about (1) Wild Goose's compliance with existing prohibitions on affiliate transactions and (2) how Joint Applicants have calculated Wild Goose's imputed, post-transfer, total capital ratio.

The affiliate transaction issue stems from two statements. At page 4 of the application, Joint Applicants state: "In addition, Wild Goose has engaged in the

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<sup>1</sup> The Commission's Affiliate Transaction Rules, first adopted by D.97-12-088, do not apply to independent gas storage providers.

purchase and sale of gas, as necessary, for its own account, in order to optimize the efficient management of its storage operations and increase the operating flexibility of the storage field itself.” At page 6, Joint Applicants state: “Since commencement of operations in 1999, Wild Goose has effectively and successfully provided firm and short term storage services at market based rates to a wide variety of customers and has engaged in the purchase and sale of natural gas, as necessary, to optimize the efficient management of its storage facility operations.” Lodi’s protest suggests that these statements mean that Wild Goose has ignored the prohibition on affiliate storage and hub service transactions. Joint Applicants’ reply states that Lodi has misread these statements, but does not provide any further clarification and, specifically, does not confirm or deny that violations have occurred. Joint Applicants must address this matter directly so that no confusion persists.

The second issue arises from comparisons between financial information in the balance sheet that Joint Applicants have tendered under seal and the application’s description of the financial situation of Wild Goose after the transaction they propose to utilize in finalizing the transfer of control. At page 23 of the application, Joint Applicants state: “An additional \$70 million in debt will be issued ... which, if imputed to Wild Goose, would result in an equity to total capital ratio for Wild Goose of 70% equity. As a result, Wild Goose would have a positive net worth upon its acquisition by the Carlyle/Riverstone Funds and would be a financially solvent entity easily capable of paying its debt.” Commission staff have been unable to replicate this calculation using the information in the balance sheet filed with the application. It is our understanding that, in communications with staff of the Commission’s Energy Division, Wild Goose has revised these calculations.

We direct Joint Applicants to file, on or before August 15, 2006, a document titled “Response to Ruling of Assigned Commissioner and Administrative Law Judge” which clarifies both issues, by explaining, in greater detail, what Joint Applicants mean by each of the statements quoted. In addition, Joint Applicants shall provide explicit calculations, as well as any supporting documentation necessary to illustrate the derivation of the total capital ratio for Wild Goose both before and after the transfer. The document shall include declarations or affidavits as to any factual averments, signed by knowledgeable officers or employees of one or more of the Joint Applicants, as appropriate.

## **5. Schedule**

Joint Applicants requested expedited treatment, argue that a hearing is not necessary, and urge the Commission to issue a decision granting the application at its August 24, 2006 meeting. While that target is overly ambitious, if Joint Applicants can supplement their showing such that hearings are not necessary, it may be possible to place this matter on the Commission’s agenda in accordance with the preliminary schedule set forth below. If Joint Applicants’ August 15 filing is incomplete, or other issues arise that require further inquiry and/or hearings, a subsequent ruling will issue to revise the schedule.

Application appears in Daily Calendar	June 6, 2006
Protest period expires	July 6, 2006
Joint Applicants’ Response to this Ruling	August 15, 2006
ALJ’s draft Decision mailed for comment	September 19, 2006
Opening comment on draft decision	October 10, 2006
Reply comment on draft decision	October 16, 2006
Draft Decision on agenda for Commission public meeting	October 19, 2006

At any event, we do not anticipate difficulty resolving this proceeding well within the eighteen month timeline required by Pub. Util. Code § 1701.5(a).

#### **6. Categorization and Need for Hearing**

This ruling confirms that this is a ratesetting proceeding and that a hearing may not be necessary, as preliminarily determined in Resolution ALJ 176-3174 (June 15, 2006).

#### **7. Presiding Officer**

ALJ Vieth is hereby designated as the presiding officer pursuant to Rule 5(k)(2).

#### **8. Amendment to Motion to File Under Seal**

By motion filed May 26, 2006, Joint Applicants seek leave to file under seal the entirety of the following attachments to the application: Attachments C (financial statements of Wild Goose), I (financial statements of Carlyle/Riverstone Fund III), K (financial statements of Carlyle/Riverstone Fund II), M (Purchase and Sale Agreement), N (Transitional Services Agreement), O (Commitment Letter from Lenders), P (Summary of Indicative Terms and Conditions), and Q (Credit Agreement).

Initial review indicates that Joint Applicants request is overbroad, since much of the documentation included in a number of these attachments appears to consist of lengthy “boilerplate.” Recently, in D.05-12-007, which concerned the change of control of Lodi, the Commission declined to seal such language and directed Lodi to provide redacted copies for the public file. In keeping with the Commission’s General Order 66-C, we direct Joint Applications to review their motion and to file an amendment that requests narrower redactions, or explains more clearly why narrower redactions are not warranted.



## **9. Initial Service List**

This ruling will be served on the service list created by Joint Applicants and attached to the Application. Thereafter, all pleadings or other documents shall be served on a new, initial service list for this proceeding which the Commission's Process Office shall establish in accordance with this ruling and post on the Commission's website by August 11, 2006.

The new service list shall include the following contact information:

### Appearances.

- for Wild Goose, EnCana, Niska Gas Storage and Carlyle/Riverstone III, the information found at page 10 of the Application;
- for WP Storage, the information found at page 1 of the motion,
- for Roseville Land, the information found at page 5, 6 and 7 of the Protest;
- for Lodi, the information found at page 2 of the protest.

### State Service.

Assigned Commissioner, President Michael R. Peevey and his advisor, Rami Kahon; ALJ Jean Vieth; Maryam Ghadassi and Michael Rosauer, both of the Commission's Energy Division.

Others persons or entities who desire service under the State Service or Information Only categories shall contact the Commission's Process Office ([ProcessOffice@cpuc.ca.gov](mailto:ProcessOffice@cpuc.ca.gov)) by August 9, 2006, request to be added to the service list for this proceeding, and provide the necessary contact information (name of representative, entity represented, address, email address, fax, telephone).

Any person or entity not listed above who wishes Appearance status shall contact ALJ Vieth ([xjv@cpuc.ca.gov](mailto:xjv@cpuc.ca.gov)) by August 9, 2006 and explain why that person or entity is interested in proceeding, indicate the nature of the anticipated participation, and provide contact information (name of representative, entity represented, address, email address, fax, telephone).

**IT IS RULED** that:

1. The issues to be considered are those described in body of this ruling.
2. By August 15, 2006, Joint Applicants shall file and serve a document titled "Response to Ruling of Assigned Commissioner and Administrative Law Judge" that provides the additional information discussed in the body of this ruling.
3. The preliminary schedule for the proceeding is set forth herein; a hearing may not be necessary, depending upon review of the document required by Ruling Paragraph 2.
4. This is a ratesetting proceeding.
5. An initial service list will be established and posted on the Commission's website by August 11, 2006.
  - (a) The ALJ will provide the Commission's Process Office with the Appearance and State Service contact information described herein.
  - (b) By August 9, 2006, other persons or entities who desire service under the State Service or Information Only categories shall contact the Commission's Process Office ([ProcessOffice@cpuc.ca.gov](mailto:ProcessOffice@cpuc.ca.gov)) and provide the necessary contact information (name of representative, entity represented, address, email address, fax, telephone).
  - (c) By August 9, 2006, any person or entity not listed as an Appearance in the body of this ruling shall contact the ALJ ([xjv@cpuc.ca.gov](mailto:xjv@cpuc.ca.gov)) and explain why that person or entity is interested in proceeding, indicate the nature of the anticipated

participation, and provide contact information (name of representative, entity represented, address, email address, fax, telephone).

6. As soon as practicable, Joint Applicants shall file an amendment to their May 26, 2006 motion that seeks leave to file portions of the application under seal, in accordance with the discussion in the body of this ruling.

7. Administrative Law Judge Vieth will be the presiding officer.

Dated July 27, 2006, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

/s/ JEAN VIETH

Jean Vieth  
Administrative Law Judge

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated July 27, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS  
Elizabeth Lewis

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

Last Update on 26-JUL-2006 by: LIL  
A0605033 NOPOST

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(cont'd)**

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